IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1120 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SYEDNA MOHAMED BURHANUDDIN SAHEB THRO' ATTORNEY

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

MR SUNDHANSU PATEL, A.G.P., for Respondent No. 1

MR SN SHELAT with M.G. NAGARKAR for Respondent No. 2 & 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 31/03/2000

ORAL JUDGEMENT

Being aggrieved by the judgement and decree

passed by the City Civil Court, Ahmedabad, in Civil Suit No. 233/74 dated 25.6.79, the plaintiff has approached this Court by way of this first appeal. By virtue of the impugned judgment, the suit filed by the appellant-plaintiff has been dismissed.

2. The facts leading to the present case are as under:-

3. The case of the appellant-plaintiff, as stated in the plaint, is that he is the sole trustee of Dawat Property Trust, a public trust registered at No.B/189 at Ahmedabad, under the provisions of Bombay Public Trusts Act. The trust owns several properties including land bearing survey No. 488/A/2 situated at Saraspur, Mitha pani-na-Darwaja. The land in question, as per the case of the appellant-plaintiff, was being used by the Dawoodi Bohra community for certain religions purposes.

4. The Municipal Corporation of Ahmedabad had declared its intention to make Scheme No. 16 by passing Resolution No. 236 dt. 19.7.1951 under the provisions of sec. 9(1) of the Bombay Town Planning Act, 1915 (hereinafter referred to as 'the Act') and the land which has been referred to hereinabove was part of the said scheme. The scheme had been finalised under Resolution dated 10.6.1970 and had come into operation with effect from 1.9.1970. The land in question, which admeasured approx. 24,079 square metres, was split up into two parts under the scheme. The first part consisted of 10,347 square metres which was renumbered as Final Plot No. 71 and was reserved for a playground. The remaining portion of the land was divided into 3 different parts with which we are not concerned.

5. Being aggrieved by the above referred scheme, the plaintiff had filed the suit in question with a prayer that the reservation be declared invalid as, due to the said scheme, land admeasuring approx. 10,347 square metres belonging to the appellant plaintiff was reserved as a playground and the appellant plaintiff had to lose the property. Because of the said scheme, legal and fundamental rights guaranteed to the appellant plaintiff under the provisions of Articles 14, 19, 26 and 31(2) of the Constitution of India had been violated. It has also been averred in the plaint that the town planning scheme is illegal.

6. The State of Gujarat, defendant No. 1 in the suit and present respondent No. 1, had filed its written statement stating that the suit was not tenable and, as

the town planning scheme was absolutely just, legal and proper, the prayers made in the suit were not justifiable and, therefore, the suit should be dismissed. It was also stated in the written statement that after finalisation of the scheme, defendant No. 3, i.e., the Town Planning Officer, had become functus officio as per the provisions of the Act.

7. Similarly, defendant No. 2, namely, Ahmedabad Municipal Corporation, had also filed its written statement contending that under Resolution dated 10.6.1970, the scheme had been finalised and had come into operation with effect from 1.9.1970. It has been stated in the written statement that all legal formalities required to be done under the Act had been duly followed. Ultimately, after considering the pleadings, the trial court had raised the following issues at Ex. 29.

"1. Whether Dawat property trust is a registered public trust and the suit property is a property of the said trust?

2. Whether the plaintiff is the sole trustee of the said trust?

3. Whether the provisions of Sections 53 and 57 of the Bombay Town Planning Act, 1054, are violative of Article 14, 19 and 31 of the Constitution of India?

4. Whether the compensation provided for the suit property was illusory? If yes, what is its effect?

5. Whether the impugned reservation of the suit land amounts to acquisition of land? If yes, whether the same is violative of Article 26 of the Constitution of India?

6. Whether the impugned reservation or acquisition of the suit land is liable to be struck down on the principle of promissory estoppel as alleged?

7. Whether the decision of the Town Planning Officer was contrary to the principles of natural justice?

8. Whether the suit is premature in view of the facts stated in para 4 of written statement exh. 12?

9. What decree and order?"

8. After considering the evidence and the pleadings, the trial court had dismissed the suit on 25.6.1979.

9. I have heard learned advocate Shri M.B. Gandhi appearing for the appellant and learned AGP Shri Sudhansu Patel for respondent No. 1 and Sr. Advocate Shri S.N. Shelat with Shri M.G.Nagarkar for respondents Nos. 2 and 3.

10. It has been submitted by learned advocate Shri Gandhi appearing for the appellant that by virtue of the impugned action of the respondent authorities, the appellant trust has lost ownership of its valuable land admeasuring 10,347 square metres which was being used for religious purposes. It has been submitted by him that the said land has been reserved as a playground, but, till today, possession of the said land has not been taken by the respondent authorities. Even at present the land in question is being used for religious purposes by the members of the Dawoodi Bohra community. It has been vehemently submitted by him that under the scheme as the land in question has been reserved for the playground, and as the appellant has lost ownership of the land in question, legal and fundamental right to hold the property of the appellant has been violated by the respondent authorities. It has been further submitted by him that the compensation which has been awarded to the appellant is absolutely illusory and, therefore, right of the appellant to hold the property has been violated.

11. On the other hand, it has been submitted by Sr. Advocate Shri Shelat appearing with learned advocate Shri Nagarkar that the appellant has no fundamental right to hold the property and, as compensation has already been paid to the appellant by the respondent authorities, the appellant is not justified in making any grievance with regard to the land in question which has been reserved for a playground. It has been further submitted by him that, upon finalisation of the scheme, the scheme has become a part of the Act as per provisions of the Act and no grievance ventilated in the plaint is genuine.

12. After hearing the concerned advocates and upon perusal of the record of the case, prima face, I do not find any error committed by the learned trial Judge. The trial court has rightly come to the conclusion, after considering the judgements cited before it, that the appellant-plaintiff could not establish that the

compensation awarded to the appellant was illusory. Only after following the provisions of the Act, the scheme had been sanctioned and, therefore, the trial court has rightly come to the conclusion that there is no violation of the provisions of the Act. No fault can be found with the scheme.

13. So far as the compensation aspect is concerned, it is clear that the appellant-plaintiff has already been compensated and as the appellant was not given adequate amount of compensation at an initial stage, an appeal was preferred before the Board of Appeal and in the appeal the price payable for the land in question had been increased by the Board of Appeal. It is pertinent to note that the appellant was permitted to lead evidence with regard to the price prevailing of the land in question and only after considering relevant evidence adduced before the Board of Appeal, the amount of compensation was determined and, therefore, it cannot be said that the compensation awarded in respect of the land in question to the appellant-plaintiff is inadequate or illusory. The grievance made by learned advocate Shri Gandhi with regard to reduction of appellant's land is also not justifiable in view of the fact that, as a result of the town planning scheme, normally, the land is divided into different plots and as a part of the planning, original plots are normally reduced to certain extent when they are converted into final plots. In the instant case, the appellant plaintiff had lost some land as a part of the scheme but as stated hereinabove, compensation has already been paid to the appellant and, therefore, in my opinion, the grievance made by learned advocate Shri Gandhi with regard to violation of fundamental rights of the appellant is not well founded. I do not see any violation of principles of promissory estoppel as urged by learned advocate Shri Gandhi and as the land in question has become part of the scheme and other final plots are alreaody allotted to the appellant-plaintiff, I do not see any substance in the grievances made by the appellant-plaintiff.

14. Though learned advocate Shri Gandhi has argued vehemently, he has failed to show as to how the decision of the Town Planning Officer was contrary to the principles of natural justice or as to how he had made errors. In the circumstances, I do not see any substance in the submissions made by learned advocate Shri Gandhi that the Town Planning Officer had committed errors in the process of finalising the scheme under the Act.

15. From the facts stated hereinabove and for the

reasons stated in the judgement delivered by the trial court, I do not see that any error has been committed by the trial court while dismissing the suit and as I do not find any illegality in the impugned judgement, the appeal filed by the appellant is hereby dismissed with no order as to costs.

_____

(hn)